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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 UNITED STATES OF AMERICA,

10 Plaintiff

11 v.

12 ANTHONY PELAYO,

13 Defendant.

CASE NO. CR18-217RSM

ORDER DENYING DEFENDANT
PELAYO'S MOTION TO EXCLUDE
EVIDENCE OF PRIOR CONVICTIONS

14 This matter comes before the Court on Defendant Pelayo's Motion to Exclude Evidence
15 of Prior Convictions. Dkt. #426. The Government has filed an opposition brief. Dkt. #534. No
16 reply brief in support of the Motion was filed. No party has requested oral argument.

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18 Mr. Pelayo moves for an order excluding evidence and testimony regarding his prior
19 criminal convictions and imprisonment, specifically that he was convicted of possession of a
20 controlled substance with intent to manufacture or deliver in 2007, citing Rule 404(b). Dkt. #426
21 at 1–2.

22 The Government states that it “does not intend to offer evidence of Pelayo’s 2007
23 conviction (or his other prior convictions) in its case-in-chief, unless Pelayo offers (in argument,
24 through testimony or questioning, or otherwise) a defense that renders the prior conviction
25 relevant.” Dkt. #534 at 1. The Government argues that the Court “does not have sufficient
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1 information to categorically prohibit the introduction of this conviction,” *id.* at 2, and that if Mr.
2 Pelayo opens the door to admissibility “the Court will be well-positioned to evaluate the parties’
3 arguments regarding the conviction’s potential unfair prejudice and probative value,” *id.* at 5.

4 The Court agrees that Mr. Pelayo has failed to set forth a basis at this juncture to prohibit
5 the introduction of this conviction under any circumstances. It may be possible for the
6 Government to demonstrate at trial that this prior conviction tends to prove a material point and
7 is not too remote in time (considering the time between the prior conviction and the criminal
8 conduct in question). Given that the Government does not intend to offer this evidence in its
9 case-in-chief, the Court will defer further consideration on this issue until trial.
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11 Having reviewed the briefing, along with the remainder of the record, the Court hereby
12 finds and ORDERS that the Defendant Pelayo’s Motion to Exclude Evidence of Prior
13 Convictions, Dkt. #426, is DENIED.

14 DATED this 4th day of June, 2021.
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18 RICARDO S. MARTINEZ
19 CHIEF UNITED STATES DISTRICT JUDGE
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